

Pursuant to Ind.Appellate Rule 65(D),  
this Memorandum Decision shall not be  
regarded as precedent or cited before  
any court except for the purpose of  
establishing the defense of res judicata,  
collateral estoppel, or the law of the case.

ATTORNEY FOR APPELLANT:

**JOHN ANDREW GOODRIDGE**  
Evansville, Indiana

ATTORNEYS FOR APPELLEE:

**STEVE CARTER**  
Attorney General of Indiana

**CYNTHIA L. PLOUGHE**  
Deputy Attorney General  
Indianapolis, Indiana

---

**IN THE  
COURT OF APPEALS OF INDIANA**

---

STEVEN GROOMS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 82A01-0511-CR-512
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

---

APPEAL FROM THE VANDERBURGH CIRCUIT COURT  
The Honorable David D. Kiely, Magistrate  
Cause No. 82C01-0503-FD-258

---

**August 23, 2006**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BAILEY, Judge**

## **Case Summary**

Appellant-Defendant Steven Grooms (“Grooms”) appeals his convictions for possession of cocaine as a Class D felony<sup>1</sup> and possession of marijuana as a Class A misdemeanor.<sup>2</sup> We affirm.

## **Issue**

Grooms raises one issue, which we restate as whether the trial court abused its discretion by admitting certain evidence at trial, in violation of the Fourth Amendment to the United States Constitution.

## **Facts and Procedural History**

On March 9, 2005, in the afternoon, Officers Jeremy Matthews (“Officer Matthews”) and Joseph Dickinson (“Officer Dickinson”) were dispatched to the home of Danielle Price (“Price”) in Evansville to execute an arrest warrant for Price. When the officers knocked on the door, Price answered and allowed the officers to step inside the house. The officers informed Price that she was under arrest, and Price requested a few minutes to obtain some personal belongings before they left. During their conversation, the officers heard a noise from the upstairs level of the house. Officer Matthews asked Price if anyone else was in the house. Price paused, said yes, that a friend was in the house, but she did not know his name.

Officer Matthews went up the stairs to the second floor and saw Grooms coming out of a room at the end of the hallway. Once he saw Officer Matthews, Grooms immediately froze in the doorway to the room. As Officer Matthews approached Grooms, he asked

---

<sup>1</sup> Ind. Code § 35-48-4-6(a).

Grooms what he was doing in the house and why he had not come downstairs when the police arrived. Then Officer Matthews did a pat down of Grooms to check for weapons, finding none. While he was standing in front of Grooms, Officer Matthews was able to look past him into the bedroom and see what appeared to be crack cocaine and a glass pipe on top of a mirror on the floor.

Upon discovering the items in the room, Officer Matthews arrested Grooms, placed him in handcuffs, and escorted him downstairs into the custody of Officer Dickinson. Officer Matthews then went back upstairs to the bedroom to examine the items. Officer Matthews testified that when he touched the glass pipe, it was still warm as if it had just been heated. Additionally, the pipe was burnt and had some Chore Boy<sup>3</sup> sticking out of the end. Officer Matthews collected the pipe, what appeared to be crack cocaine, and Grooms' cell phone as evidence.

While Officer Matthews was investigating upstairs, Officer Dickinson searched Grooms, who was in handcuffs, for weapons and possessions on his person. This search produced miscellaneous personal property, including what appeared to be a marijuana cigarette and pieces of a Chore Boy. Upon testing, the suspected substances found during the incident at Price's home were later proven to be cocaine and marijuana.

As a result of this incident, the State charged Grooms with possession of cocaine as a

---

<sup>2</sup> Ind. Code § 35-48-4-11(1).

<sup>3</sup> "Chore Boy" is a brand of copper steel or wool scouring pad, which is used in smoking cocaine to keep the cocaine in place in the pipe.

Class D felony and possession of marijuana as a Class A misdemeanor.<sup>4</sup> On September 9, 2005, Grooms filed a Motion to Suppress the marijuana and Chore Boy found in his pocket. The trial court denied Grooms' Motion to Suppress after a hearing.

During the jury trial, Grooms objected to the admission of the marijuana and pieces of Chore Boy. The trial court overruled the objection and admitted both items into evidence. After the trial, the jury found Grooms guilty as charged. The trial court sentenced Grooms to the Indiana Department of Correction for eighteen months for possession of cocaine and one year for possession of marijuana, to be served concurrently. Grooms now appeals his conviction.

## **Discussion**

### **I. Standard of Review**

On appeal, Grooms argues that the trial court erred when it denied his motion to suppress, because Officer Matthews did not have probable cause to arrest him without a warrant, making the arrest and subsequent search illegal. However, because Grooms did not seek an interlocutory appeal after the denial of his motion to suppress, the issue presented is more appropriately framed as whether the trial court abused its discretion by admitting the evidence at trial. Washington v. State, 784 N.E.2d 584, 586-87 (Ind. Ct. App. 2003).

In reviewing the trial court's ruling on the validity of a warrantless arrest, we consider the evidence favorable to the trial court's ruling and any uncontradicted substantial evidence to the contrary to determine whether there is sufficient evidence to support the ruling.

---

<sup>4</sup> The State filed a motion to enhance the charge of possession of marijuana to a Class D felony, but the trial court dismissed the motion.

Griffith v. State, 788 N.E.2d 835, 839 (Ind. 2003).

A trial court has broad discretion in ruling on the admissibility of evidence. Washington, 784 N.E.2d at 587. Accordingly we will only reverse a trial court's ruling on admissibility of evidence when the trial court has abused its discretion. Id. An abuse of discretion occurs when a trial court's decision is clearly against the logic and effect of the facts and the circumstances before the court. Id.

## II. Analysis

Grooms' first contention is that the pat down search performed by Officer Matthews prior to the arrest was an illegal search and seizure of Grooms in violation of the Fourth Amendment of the United States Constitution. However, no evidence was produced by this search, and thus, no evidence from that search was admitted at trial. Hence, there is no evidence from this search that could have been improperly admitted. We therefore limit our discussion to Grooms' contention that his arrest after the discovery of the cocaine, as well as the subsequent search of his pockets by Officer Dickinson, violated the Fourth Amendment.<sup>5</sup>

Specifically, Grooms argues that Officer Matthews did not have probable cause to effectuate his warrantless arrest, making the arrest and subsequent search by Officer Dickinson a violation of the Fourth Amendment. The Fourth Amendment to the United States Constitution provides all citizens with "[t]he right of people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures . . . ." U.S.

---

<sup>5</sup> Grooms' Motion to Suppress additionally challenged the admissibility of this evidence under Article 1 § 11 of the Indiana Constitution. However, the Indiana Constitution is not mentioned in his appellate brief as a foundation for his appeal. Therefore, he has waived this argument.

CONST. AMEND. IV. A law enforcement officer may arrest a person without a warrant when the officer has probable cause to believe the person has committed, or attempted to commit, or is committing or attempting to commit a felony. Ind. Code § 35-33-1-1(a)(2).

Probable cause adequate to support a warrantless arrest exists when, at the time of the arrest, the officer has knowledge of facts and circumstances that would warrant a person of reasonable caution to believe that the suspect committed a criminal act. Griffith v. State, 788 N.E.2d 835, 840 (Ind. 2003). The amount of evidence necessary to meet the probable cause for a warrantless arrest is determined on a case-by-case basis. Id. The level of proof necessary to establish probable cause is less than that necessary to establish guilt beyond a reasonable doubt. Lamagna v. State, 776 N.E.2d 955, 958 (Ind. Ct. App. 2002). Probable cause requires only a fair probability of criminal activity, not a *prima facie* showing, and may be established by evidence that would not be admissible at trial. Id.

Officer Matthews found Grooms in Price's home exiting the room containing recently used drug paraphernalia and drugs. The determination of whether the arrest was supported by probable cause centers on whether Grooms' proximity to the cocaine and crack pipe constituted constructive possession, providing Officer Matthews with adequate probable cause.

Constructive possession is established by showing that the defendant has the intent and capability to maintain dominion and control over the contraband. Person v. State, 661 N.E.2d 587, 590 (Ind. Ct. App. 1996), trans. denied. Where the accused had exclusive control of the premises on which the contraband was found, an inference is permitted that he

or she knew of the presence of the contraband and was capable of controlling it. Id. However, as in the present case, when the possession of the premises is not exclusive, the inference is not permitted absent some additional circumstances indicating the knowledge of the presence of the contraband and the ability to control it. Id. Some of the “additional circumstances” recognized include: (1) incriminating statements made by the defendant; (2) attempted flight or furtive gestures; (3) a drug manufacturing setting; (4) proximity of the defendant to the contraband; (5) contraband is in plain view; and (6) location of the contraband is in close proximity to items owned by the defendant. Id. These circumstances apply to show constructive possession even where the defendant is only a visitor to the premises where the contraband is found. Collins v. State, 822 N.E.2d 214, 222 (Ind. Ct. App. 2005), trans. denied.

Prior to being placed under arrest, Grooms was in the doorway of the bedroom where the cocaine and crack pipe were located. Officer Matthews testified that he saw these items resting on top of a mirror on the floor in the bedroom while he was questioning Grooms. From this testimony it appears that the contraband was in plain view. Additionally, Grooms was in close proximity to the contraband. He was the only person in the second floor of the house and was exiting the bedroom where the cocaine and warm pipe were found. From this evidence, a reasonable inference can be made that Grooms had knowledge of the cocaine and the ability to control it. These additional circumstances of plain view and close proximity of the defendant to the contraband permit the conclusion that Grooms constructively possessed the cocaine. Moreover, a person of reasonable caution would be warranted under these

circumstances in believing that Grooms had committed a criminal act. Thus, Officer Matthews had probable cause to place Grooms under arrest.

Because the arrest was valid, the subsequent search of Grooms was also valid. When a search is conducted without a warrant, the State must prove that an exception to the warrant requirement existed at the time of the search. White v. State, 772 N.E.2d 408, 411 (Ind. 2002). A search incident to a lawful arrest is one such exception. Chimel v. California, 395 U.S. 752, 762 (1969). Under this exception, an officer may conduct a warrantless search of the arrestee's person and the area within his or her immediate control. White, 772 N.E.2d at 411. Officer Dickinson discovered the challenged evidence during the search subsequent to Grooms' arrest. Because this search was done subsequent to his arrest, a warrant was not required. Accordingly, Grooms was not subjected to an unreasonable search or seizure under the Fourth Amendment. Consequently, the trial court did not abuse its discretion by admitting the marijuana and Chore Boy into evidence over the objection of Grooms.

For the foregoing reasons, we affirm Grooms' convictions for possession of cocaine as a Class D felony and possession of marijuana as a Class A misdemeanor.

Affirmed.

RILEY, J., and MAY, J., concur.